

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN LEE LOSIEVSKI,

Defendant and Appellant.

C047277

(Super. Ct. No.
NCR62983)

ORDER MODIFYING
OPINION; NO CHANGE
IN JUDGMENT

THE COURT:

It is ordered that the opinion filed in this case on February 15, 2005, be modified in the following particulars:

1. On pages 3 and 4, delete the last two paragraphs of the opinion (preceding the disposition) and replace them with the following paragraph:

One of the reasons the trial court gave for imposing the upper term is defendant's prior criminal convictions. (Cal. Rules of Court, rule 4.421(b)(2).) As we have noted, the rule of *Apprendi*

and *Blakely* does not apply to a prior conviction used to increase the penalty for a crime. Since one valid factor in aggravation is sufficient to expose defendant to the upper term (*People v. Cruz* (1995) 38 Cal.App.4th 427, 433), defendant's sentence did not violate the rule of *Apprendi* and *Blakely*.

These modifications do not change the judgment.

FOR THE COURT:

SCOTLAND, P.J.

RAYE, J.

MORRISON, J.